

REMARKS/ARGUMENTS

The specification is sought to be amended, which amendment is addressed below with respect to the rejection of claim 2 under 35 U.S.C. 112, first paragraph.

Claims 6-14 are cancelled, subject to the right of Applicant to file a divisional reissue application pursuant to 37 CFR 1.177 and MPEP 1451.

Claim 2 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The Examiner asserts that the specification failed to disclose materials for the endotracheal tube, and only disclosed the use of fabric or plastic compatible with X-ray, MRI or CAT scan procedures for the collar embodiment. Applicant proposes amending the specification as set forth above, to add specific disclosure paralleling claim 2.

In the application as filed on March 13, 1997, original claim 8 (which became issued claim 2) provided as follows:

8. The apparatus of Claim 7 wherein said endotracheal tube and said bladder comprise non-metallic fabric or plastic materials, whereby said apparatus is compatible with X-ray, MRI or CAT scan procedures.

Because the disclosure was made in the claims as originally filed, an amendment incorporating the disclosure into the specification is not prohibited "new matter." See, e.g., MPEP 2163.06, stating "information contained in any one of the specification, claims or drawings of the application as filed may be added to any other part of the application without introducing new matter." Thus the proposed amendment does not violate 35 U.S.C. 132. 35 U.S.C. 251 similarly provides that "[n]o new matter shall be introduced into the application for reissue." However, even basing the analysis on the patent as issued rather than the specification (see MPEP 1411.02), there is no new matter because claim 2 in the patent to be reissued (5,916,242) is in substance identical to the matter to be added to the specification by amendment, and claim 2 in the patent to be reissued is identical to claim 2 now pending in the reissue application. Accordingly, the amendment to the specification should be entered, and that amendment thereby obviates the rejection based on 35 U.S.C. 112, first paragraph.

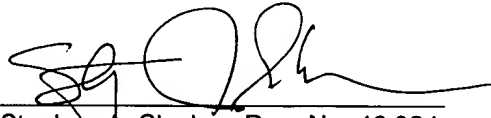
A statement as to loss or inaccessibility of the original patent is submitted herewith.

In view of the above amendments and remarks, it is respectfully submitted that all grounds of rejection and objection have been avoided and/or traversed. It is believed that the case is now in condition for allowance and same is respectfully requested.

If any issues remain, or if the Examiner believes that prosecution of this application might be expedited by discussion of the issues, the Examiner is cordially invited to telephone the undersigned attorney for Applicant at the telephone number listed below.

Respectfully submitted,

By:


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**REISSUE PATENT APPLICATION
STATEMENT AS TO LOSS OF ORIGINAL PATENT**

Docket Number (Optional)

41145-1001

I hereby state that:

I am the applicant for a reissue patent based on the original patent identified below.

Name of Inventor(s)/Assignee(s)

GEORGE R. SCHWARTZ

Patent Number

3,916,242

Title of Invention

Apparatus for Rapid Cooling of the Brain and Method of

Reissue application number (if known)

Performing Same

The ribboned original patent grant is lost or inaccessible

Signature

George R. Schwartz, MD

Typed or printed name

GEORGE R. SCHWARTZ

Date

December 1, 2003

Capacity (e.g. inventor(s), officer of assignee)

Sole Inventor

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